

REMARKS

INTRODUCTION

In accordance with the foregoing, claims 1, 2, 20, 35, 37, 45, 59 and 61 have been amended and claim 36 has been cancelled, without prejudice or disclaimer.

Claims 1-35 and 37-63 are pending and under consideration.

REJECTIONS UNDER 35 USC 102 AND 103

Claims 1, 18-19, 23-25, 27-35, 43-44, 59-60 and 62 stand rejected under 35 USC § 102(e) as being anticipated by Kekic et al., U.S. Patent No. 6,664,978, and claims 2-17, 20-22, 26, 37-42, 45-58, 61 and 63 stand rejected under 35 USC § 103(a) as being obvious over Kekic et al. in view of Barrack et al., U.S. Patent No. 6,047,279. These rejections are respectfully traversed.

The Office Action appears to indicate that Kekic et al. at least fails to disclose or suggest implementing a distributed network element for a central management system. See the § 103 obviousness rejections of claims 2-17, 20-22, 26, 36-42, 45-58, 61 and 63, where different aspects of such a central management system and corresponding distributed network elements or corresponding distributed polling gateways have been indicated as not being disclosed or suggested by Kekic et al. Thus, such a distributed network element and central management system aspect has been added to independent claims 1, 35, and 59, thereby including the same in each independent claim, with differing scope and breadth. It is noted that independent claim 48 already included this central management system feature, and has been accordingly rejected under 35 USC § 103.

Therefore, the following traversal will approach the patentability of the pending claims based on the proffered combination of Kekic et al. and Barrack et al. relied on in the Office Action to disclose the claimed central management system and network element features for the rejection of claims 2-17, 20-22, 26, 36-42, 45-58, 61 and 63.

The Office Action has proffered that it would have been obvious to modify into Kekic et al. the claimed distributed network elements or gateways and the central management system. Applicants respectfully disagree.

The recited motivational rationales, for the modifications of Kekic et al. to include the differing aspects of the claimed distributed network elements or gateways and central management system features, include:

a) "in order to communicate information about the devices being managed in a timely and efficient manner";

b) "in order to provide information regarding events or state of the device, thereby improving the system scalability;"

c) "in order to provide interface between the management system (user interface) and the devices being managed in order to communicate information about the devices being managed in a timely and efficient manner;"

d) "in order to filter data according to the analysis rules within the gateway thereby providing information regarding event or state of the device, to improve the system scalability."

Thus, though it is respectfully noted that some features may be repeated with slightly differing scope and breadth for claims 2-17, 20-22, 26, 36-42, 45-58, 61 and 63, it is respectfully submitted a prima facie obviousness standard requires more specificity of motivational rationale in rejecting differing features, i.e., the recited motivation rationales are too vague and expansive to provide applicants with sufficient information as to the underlying reasoning the Examiner has determined that such different proffered modifications of Kekic et al. are obvious.

Similarly, the recited motivations do not support a prima facie obviousness case since they would appear applicable to any situation or combination and are based solely on the Examiner's belief, e.g., the record fails to provide support that "system scalability" or timely management and efficiency will be improved by any of the proffered modifications of Kekic et al.

Further, the underlying rejections merely cite what feature is believed to be disclosed by Barrack et al., adds that feature to Kekic et al., and surmises that that addition will achieve the proffered achievement or goal. However, the Office Action has failed to provide any evidence, and the record is lacking of the same, to support the conclusion that Kekic et al. needed or desired the proffered modification, the same would even be modifiable as proffered, or that the concluded achievement or goal would be accomplished if such a modification of Kekic et al. were made.

Thus, it is respectfully submitted that the outstanding rejections fail to meet a prima facie obviousness case.

Accordingly the following is noted: "[i]t is well established that agencies have a duty to provide reviewing courts with a sufficient explanation for their decisions so that those decisions may be judged against the relevant statutory standards, and that failure to provide such an explanation is grounds for striking down the action," in addition, "an agency is not free to refuse to follow circuit precedent." In re Lee 61 USPQ2d 1430, 1434 (CA FC 2002). Thus, the following prima facie obviousness requirements must be met.

"The factual inquiry whether to combine the references must be thorough and searching." In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002) (citing McGinley v. Franklin Sports, Inc., 60 USPQ2d 1001, 1008 (Fed. Cir. 2001)). The factual inquiry must be based on objective evidence of record, and cannot be based on subjective belief and unknown authority. Id. at 1433-34. The Examiner must explain the reasons that one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious. In re Rouffet, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998).

As commonly understood, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art..."[the Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." In re Fritch, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992).

Further, it is well settled that "the Board [and Examiner] cannot simply reach conclusions based on [their] own understanding of experience - or on [their] assessment of what would be basic knowledge or common sense. Rather the Board [and Examiner] must point to some **concrete evidence in the record** in support of these findings." In re Zurko, 258 F. 3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)(Emphasis added). See also In re Lee, 277 F. 3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), in which the court required evidence for the determination of unpatentability by clarifying that the principles of "common knowledge" and "common sense" may only be applied to the analysis of evidence, rather than be a substitute for evidence.

Thus, accordingly, a prima facie obviousness rejection requires evidenced motivation from something in the record that would lead one skilled in the art to combine the relevant teachings; there must be some need or desire evidenced in the record.

In addition, it is noted that even the present application background details, on pages 9 and 10, that there are typically strong reasons not to implement the Office Actions modification

of a server/client management system to encompass management of distributed network elements or polling gateways, e.g., separate software code for each stand-alone NMS system may need to be written, installed, and maintained on each NMS, and that such implementations could increase processing requirements.

Thus, the only evidence in the record would appear to discourage such a modification of Kekic et al.

Accordingly, it is respectfully submitted that it would not have been obvious to make the proffered modifications of Kekic et al. to disclose the presently claimed invention. In addition, it is respectfully submitted that the outstanding obviousness rejections fail to present a prima facie obviousness case.

Therefore, for at least the above, it is respectfully submitted that claims 1-35 and 37-63 are patentably distinguishable over Kekic et al. and Barrack et al., alone or in combination. Withdrawal of the outstanding rejections is respectfully requested.

CONCLUSION

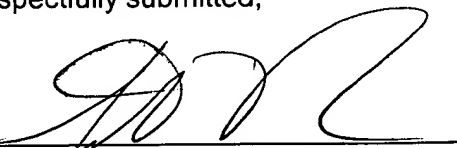
There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Respectfully submitted,

Date: September 23, 2004

By:


Stephen T. Boughner
Registration No. 45,317